

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF WEST VIRGINIA  
AT BECKLEY**

JEFFREY PHELIX,

Petitioner,

v.

CIVIL ACTION NO. 5:20-cv-00341

WARDEN,  
*FCI Beckley,*

Respondent.

**ORDER**

Pending is Petitioner Jeffrey Phelix’s Petition under 28 U.S.C. § 2241 for Writ of Habeas Corpus, filed May 14, 2020. [Doc. 1]. This action was previously referred to the Honorable Omar J. Aboulhosn, United States Magistrate Judge, for submission of proposed findings and recommendations (“PF&R”). [Doc. 4]. Magistrate Judge Aboulhosn filed his PF&R on April 18, 2023. [Doc. 6]. Magistrate Judge Aboulhosn recommended that the Court construe Mr. Phelix’s § 2241 petition as a Motion to Vacate, Set Aside, or Correct a Sentence under 28 U.S.C. § 2255, direct the Clerk to open a new action in this Court and file the § 2255 motion *nunc pro tunc* to May 14, 2020, and remove this matter from the Court’s docket.

The Court need not review, under a de novo or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendations to which no objections are addressed. *See Thomas v. Arn*, 474 U.S. 140 (1985); *see also* 28 U.S.C. § 636(b)(1) (“A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations *to which objection is made.*” (emphasis added)). Failure to file timely objections constitutes a waiver of de novo review and the Petitioner’s


right to appeal the Court's order. *See* 28 U.S.C. § 636(b)(1); *see also United States v. De Leon-Ramirez*, 925 F.3d 177, 181 (4th Cir. 2019) (Parties may not typically “appeal a magistrate judge’s findings that were not objected to below, as § 636(b) doesn’t require de novo review absent objection.”); *Snyder v. Ridenour*, 889 F.2d 1363, 1366 (4th Cir. 1989). Further, the Court need not conduct de novo review when a party “makes general and conclusory objections that do not direct the Court to a specific error in the magistrate’s proposed findings and recommendations.” *Orpiano v. Johnson*, 687 F.2d 44, 47 (4th Cir. 1982). Objections in this case were due on May 5, 2023. No objections were filed.

The Court **ADOPTS** the PF&R **IN PART**. [**Doc. 6**]. While it **CONSTRUES** Mr. Phelix’s § 2241 petition as a Motion to Vacate, Set Aside, or Correct a Sentence under 28 U.S.C. § 2255 [**Doc. 1**], the Court **REFERS** this action to the Honorable Omar J. Aboulhosn, United States Magistrate Judge, for submission of proposed findings of fact and recommendations for the disposition of the § 2255 motion no later than **September 1, 2023**.

The Court **DIRECTS** the Clerk to transmit a copy of this Order to any counsel of record and any unrepresented party.

ENTER: May 19, 2023



  
Frank W. Volk  
United States District Judge